

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROBERT HALL,

Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

) Case No. DEMO-01-0014

)

) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

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**I. INTRODUCTION**

**1.1 Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and RENÉ EWING, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on April 17, 2002. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

**1.2 Appearances.** Appellant Robert Hall was present and was represented by Mark Lyon, General Counsel for the Washington Public Employees Association. Amy Cook and Janetta Sheehan, Assistant Attorneys General, represented Respondent Department of Corrections.

**1.3 Nature of Appeal.** This is an appeal from a disciplinary sanction of demotion for the causes of neglect of duty, gross misconduct and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges that Appellant created a hostile work environment and abused his position when he used sexually offensive language and made jokes and innuendos of a sexual nature.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## II. MOTION

2.1 At the outset of hearing, Appellant made a motion to dismiss the charges and set aside the discipline.

### **Appellant's argument**

2.1 Appellant argues that allegations one through four in the disciplinary letter should be dismissed because they were not initiated within 14 days after discovery of the alleged misconduct; 2) because the Employee Conduct Report (ECR) was not timely processed; and 3) because the department's actions prejudiced him and substantially interfered with his ability to mount a defense.

2.2 Appellant asserts that allegations one through four were untimely under DOC Policy 857.005(1)(f) and under Article 8.3 of the Union contract. Appellant argues that the ECR was not initiated within 14 days and was not timely processed because the Supervisor's report took 30 days rather than 7 days allowed. Appellant argues that a suspension of the time limits did not occur, that he did not agree to delaying the process and no circumstances warranted suspension of the time limits. Appellant further argues that these allegations lack specificity and do not allow him to mount a defense without having to conduct discovery.

1 2.3 Appellant argues that the fifth allegation should be dismissed because the allegation  
2 contains no specific dates, times or places. Appellant asserts that there was insufficient notice to  
3 him to allow him to present a defense without having to conduct discovery.

4 **Respondent's argument**

5 2.4 Respondent acknowledged that the Collective Bargaining Agreement (CBA) and DOC  
6 policies both require that an ECR be initiated within 14 days of the discovery of the alleged  
7 misconduct. However, Respondent asserts the ECR was issued on the 15th day because Appellant  
8 failed to report to work as scheduled and because the day the ECR was placed in the mail was a  
9 federal holiday. Respondent asserts that in this case, Appellant was not prejudiced in any way by  
10 the delay.  
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13 2.5 Respondent asserts that the supervisory report required additional time because the initial  
14 allegations appeared to have occurred between Appellant and Officer Wyman, but it became  
15 apparent as the investigation ensued that 40 additional coworkers had to be interviewed.  
16 Respondent argues that an extension was warranted as the investigation widened into serious  
17 allegations of sexual harassment and hostile work environment.  
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19  
20 2.6 In addressing the issue of specificity, Respondent argues that while the disciplinary letter  
21 may not contain specific dates of when the allegations occurred, information is contained within the  
22 attachments to the disciplinary letter and were provided to Appellant. Respondent asserts that in  
23 many cases, the comments made to Officer Wyman or to other staff were repetitive in nature and  
24 are specific enough that Appellant could defend himself. Respondent asked that the Board deny the  
25 motion and allow a full and fair hearing on the facts of this case.  
26

1 **Board ruling**

2 2.7 The department's Employee Conduct Report contains the following instructions, which are  
3 in conformance with the DOC Policy 857.005 and the CBA: 1) That the person making the report  
4 provide a clear description of the incident and submit it to the supervisor of the employee involved  
5 within 14 calendar days after the date of discovering the employee's alleged misconduct; 2) that the  
6 form be submitted to the employee involved who shall complete the "Employee's Statement" and  
7 return to his/her supervisor within 7 calendar days following receipt of the ECR; 3) that the  
8 appropriate supervisor review the facts of the incident, complete the "Supervisor's report" and  
9 submit the report to the Office Head within 7 calendar days following the date of receipt; 4) and  
10 that the Head Officer or designee review and determine whether misconduct occurred and inform  
11 the employee within 30 calendar days following the date of receipt of the ECR.  
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13  
14 2.8 The Board reviewed the specific charges in the March 23, 2001 letter to Appellant, which  
15 outlined the reasons for Appellant's demotion:

16 1. Officer David Wyman overheard you and Officer Tomas Rennie refer to one  
17 another as "bitch," "homo," "faggot," and "bitchmaker."

18  
19 2. On at least 20 occasions you said to Officer David Wyman, while working Major  
20 Control, "Hey Wyman, did you know that Rennie can't get a hard on unless he smells  
21 shit?" Officer Wyman repeatedly told you to stop and that he did not like this type of  
22 language.

23 3. In a conversation between you and Officer Wyman about his children, you stated  
24 to him, "You mean they're Greek?" Officer Wyman discovered that you were  
25 referring to the work "Greek" as a term for anal intercourse.

26 4. On various other occasions, you said to Officer Wyman, "This is how you learned  
in college?" "you have lousy writing." "How come you're so handicapped when I  
am here?" On one occasion, when Officer Wyman asked to go to the bathroom, you  
stated, "Sounds like a personal problem to me."

1  
2 5. On September 28, 2000, I became aware that staff throughout the institution  
3 complained about your unprofessional behavior towards them. They stated that you  
4 have been rude and even yelled at them.

5 2.9 On September 25, 2000, Officer Wyman made claims about inappropriate comments made  
6 to him by Appellant. On Saturday, October 9, 2000, the 14th day, Captain Baker initiated the ECR.  
7 However, Appellant was not at work and Respondent mailed the ECR to Appellant via U.S. mail.  
8 However, Monday, October 11 was Columbus Day and Appellant did not receive the ECR until  
9 October 12, 2000. As a result, the ECR was not initiated within 14 days as required by DOC policy  
10 and the CBA. However, the Board orally denied Appellant's motion to dismiss the charges on the  
11 basis of the untimely ECR because there was no showing of any probable prejudice to the  
12 Appellant.

13  
14 *Allegations one and two*

15 2.10 The Board also reviewed the attachments to the disciplinary letter, which contained a letter  
16 of expectation given to Appellant on December 26, 1999. After reviewing the letter, the Board  
17 granted Appellant's motion to dismiss allegations one and two because Officer Wyman had  
18 reported those claims in December 1999, and Respondent conducted a subsequent investigation.  
19 The department found that the investigation was inconclusive as to a majority of Officer Wyman's  
20 claims. However, the investigation substantiated that Appellant referred to Officer Wyman as his  
21 "bitch." In the December 26 letter, Lt. Edward Jones, Appellant's supervisor, addressed  
22 Appellant's inappropriate behavior and directed Appellant to cease making any future comments of  
23 a similar nature. Charges one and two in the disciplinary letter here address the same issues  
24 investigated in December 1999. Therefore, the Board concluded that Respondent should be  
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1 precluded from taking formal disciplinary action based on the same incident for which Appellant  
2 was given an informal, written corrective action and dismissed allegations one and two.

3 *Allegations three and four*

4 2.11 The Board denied Appellant's motion to dismiss charges three and four because they were  
5 incidents which appeared to have occurred **after** the December 26 letter of expectations was issued  
6 to Appellant and were not previously known to the department or investigated.  
7

8 *Allegation five*

9 2.12 The Board denied Appellant's motion to dismiss allegation five on the issue of specificity  
10 and clarified that Respondent would have to establish when the specific claims made by staff  
11 members Francisco Perales, Margaret Gilbert and Officer Juan Miranda, occurred.  
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13  
14 The Board now reaffirms its oral ruling, and makes further rulings on Appellant's motion as  
15 follows:  
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17 *ECR Timelines*

18 2.13 Processing the ECR and service on Appellant was untimely, however, after hearing all of the  
19 evidence, we continue to hold that there was no prejudice to the Appellant.  
20

21 2.14 The timeliness of the Supervisor's report went beyond the 7 days required by the  
22 department's ECR procedures. However, Policy 857.005, section 2, outlines the processing of an  
23 ECR and indicates that "Staff involved in initiating, responding to, or reviewing an ECR shall  
24 follow the instructions and time limits outlined at the beginning of the form unless the time limits  
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1 may be extended by mutual written agreement or unless the investigation warrants suspension of the  
2 time limits” (emphasis added).

3  
4 2.15 The facts here established that on October 2 and 5, 2000, Captain Julie Baker met with  
5 Appellant to conduct preliminary interviews regarding Officer Wyman’s claims. On October 11,  
6 2000, Appellant received the ECR. On October 18, 2000, Superintendent Alice Payne informed  
7 Associate Superintendent Gary Fleming, who was conducting the investigation, that she approved  
8 the extension of the supervisory report of the ECR because of the nature of the allegations, which  
9 dealt with sexual harassment and hostile work environment. During the course of the investigation,  
10 Mr. Fleming attempted to meet with Appellant on several occasions. However, Appellant never  
11 met with Mr. Fleming, stating that he was unable to do so because his union representative was not  
12 available. Appellant ultimately refused to meet with Mr. Fleming because Mr. Fleming did not  
13 provide him with any of the supporting reports and documents from the investigation. Mr. Fleming  
14 submitted the investigative report to Superintendent Payne on December 11, 2000.  
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16  
17 2.16 Under these circumstances and the department’s need to conduct a full and thorough  
18 investigation, the 60-day time period to complete the supervisor’s report did not prejudice  
19 Appellant or substantially interfere with Appellant’s ability to mount a defense.  
20

21 *Allegation five*

22 2.17 Officers Robert Perales, Anthony Walker, Juan Miranda and administrative assistant  
23 Margaret Gilbert described incidents where they perceived Appellant’s behavior to be rude and  
24 unprofessional, however, they could not recollect with any certainty when the incidents occurred.  
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1 After reviewing the testimony and evidence presented by Respondent regarding allegation five, we  
2 find that the charge lacks specificity and Appellant's motion to dismiss allegation five is granted.

### 3 4 **III. FINDINGS OF FACT**

5 3.1 Appellant Robert Hall is a Correctional Officer 2 and permanent employee for Respondent  
6 Department of Corrections at McNeil Island Corrections Center (MICC). Appellant and  
7 Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder,  
8 Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on  
9 May 4, 2001.  
10

11 3.2 By letter dated March 23, 2001, Superintendent Alice Payne informed Appellant of his  
12 demotion from a Correctional Sergeant position to the position of a Correctional Officer 2, effective  
13 April 9, 2001. Superintendent Payne charged Appellant with neglect of duty, gross misconduct and  
14 willful violation of policy, specifically alleging that Appellant created a hostile work environment  
15 and abused his position when he used sexually offensive language and made jokes and innuendos of  
16 a sexual nature.  
17

18 3.3 Appellant began his employment with the Department of Corrections in 1980 at the  
19 Washington State Reformatory. In 1982, Appellant transferred to MICC and in 1992 he was  
20 promoted to a position as a Correctional Sergeant. Appellant's work performance has been  
21 evaluated as meeting or exceeding normal work requirements.  
22

23 3.4 Prior to his demotion, Appellant was assigned to work in the major control booth, a very  
24 confined and high stress area of the institution. Correctional Officer David Wyman began working  
25 in the major control booth under Appellant's supervision in May 1999. Appellant and Officer  
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1 Wyman were the only two employees assigned to work in the control booth. Shortly after  
2 beginning his assignment in the control booth, Officer Wyman observed that Appellant engaged in  
3 a lot of "raunchy" and inappropriate language, especially with former correctional officer Tomas  
4 Rennie. The credible testimony established that Mr. Rennie, who was responsible for transporting  
5 offenders, spent a significant amount of time in the control booth. Officer Wyman was offended by  
6 the interactions and conversations between Appellant and Mr. Rennie.

7  
8 3.5 In December 1999, Officer Wyman came forward to management with allegations that  
9 Appellant was directing inappropriate, disparaging and profane remarks at him. Appellant's  
10 supervisor, Lieutenant Edward Jones, investigated Officer Wyman's claims, and he concluded that  
11 the claims were inconclusive with one exception. Lt. Jones issued Appellant a letter of expectation  
12 dated December 26, 1999 for calling Officer Wyman his "bitch," the sole allegation that could be  
13 corroborated by an independent witness. Appellant was directed to discontinue making any future  
14 remarks of a similar nature.  
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16  
17 3.6 Officer Wyman was reassigned to a different duty post after he brought forward the  
18 December 1999 allegations. The new post required that Officer Wyman, a single parent, work  
19 weekends. Officer Wyman felt that reporting Appellant's misconduct negatively impacted him for  
20 several reasons. First, he was confronted with losing his bid post, which he obtained based on  
21 seniority and which afforded him weekends off. Second, if he continued working his bid post, he  
22 was faced with working under Appellant's supervision despite having made serious allegations  
23 against him. Third, he could assume a new post and work weekends, which took time away from  
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1 his family. Consequently, Officer Wyman met with Lt. Jones and Appellant and agreed to “let  
2 bygones be bygones” so he could return to work his desired duty post in the major control room.

3  
4 *Allegation three*

5 3.7 After returning to work in the major control booth, Appellant refrained from making any  
6 objectionable comments to Officer Wyman. But in time, Appellant began to engage in the same  
7 pattern of inappropriate behavior toward Officer Wyman.

8  
9 3.8 Officer Wyman testified that sometime in June-July 2000, he and Appellant were engaged in  
10 a conversation. Officer Wyman stated that his kids were sad because they were leaving their  
11 friends behind. Appellant remarked, “You mean they’re Greek?” Officer Wyman initially did not  
12 understand what Appellant meant; however, based on Appellant’s demeanor, he understood that  
13 Appellant used the term “Greek” in reference to anal intercourse. Officer Wyman became  
14 extremely upset, and he told Appellant that his son was a child and that he would not tolerate such a  
15 “filthy” comment about him. Appellant told Officer Wyman, “I am the sergeant here. I’ll do what I  
16 want.” Officer Wyman threatened to report Appellant to the captain if he repeated the statement  
17 again.  
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20 3.9 Officer Wyman testified that Mr. Rennie was present in the major control booth and  
21 overheard Appellant use the term “Greek.” After overhearing Appellant’s comments, Mr. Rennie  
22 told Officer Wyman that Appellant “was talking crazy.” Officer Wyman credibly testified that  
23 Appellant apologized to him the following day. Officer Wyman decided not to report the incident  
24 to management.  
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1 3.10 Appellant denies using the term “Greek” to refer to Officer Wyman’s children. Mr. Rennie  
2 testified on behalf of Appellant, and he also denied that he ever heard Appellant use the  
3 terminology “Greek” to refer to Officer Wyman’s children. Mr. Rennie further testified that  
4 Appellant and Officer Wyman interacted in a professional manner, and he denied that any joking or  
5 inappropriate conversations took place in the control booth.

6  
7 3.11 We have weighed Officer Wyman’s testimony against that of Appellant and Mr. Rennie.  
8 We find that Officer Wyman is more credible. Officer Wyman has been consistent and forthright in  
9 his description of the events, and there is no evidence or reason why Officer Wyman would  
10 fabricate the allegations against Appellant. In fact, Officer Wyman’s credibility is further supported  
11 because he was reluctant to come forward due to his fear that there would be negative  
12 consequences, specifically, that he would be reassigned again to another undesirable post.  
13 Moreover, Appellant’s past behavior toward Officer Wyman, in which he called Officer Wyman his  
14 “bitch,” also lends credibility to Officer Wyman’s testimony and supports that Appellant referred to  
15 Officer Wyman’s children as “Greek,” a term which refers to anal intercourse.  
16

17  
18 *Allegation four*

19 3.12 Officer Wyman testified that Appellant’s behavior toward him began to escalate in  
20 September 2000. Officer Wyman credibly testified that Appellant repeatedly used profanity, yelled  
21 and directed “cheap shots” at him, made rude remarks and generally exhibited hostile behavior  
22 toward him.  
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1 3.13 Officer Wyman was still reluctant to come forward and “take on” Appellant because of  
2 Appellant’s comments that others in higher positions of authority had tried but failed to take  
3 disciplinary actions against him in the past.

4 3.14 On September 22, 2000, however, Officer Wyman found Appellant’s hostility toward him to  
5 be considerably worse than normal, and he began to document Appellant’s comments. Officer  
6 Wyman’s log for September 22 contains the following entries of remarks made to him by  
7 Appellant:  
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9  
10 09:25 “This is how you learned to write in college? You have lousy writing,  
mine is way better than yours.”

11 09:44 “Wyman’s gonna be running around here like a chicken with his head cut  
12 off when I’m gone. He’ll be bumping into his buddy Schrum.”

13 10:10 “When Wyman screws up next week he’ll tell everyone that Hall never  
14 showed him that.”

15 11:30 [Wyman] asked to go downstairs to go the men’s room and [Hall] said,  
16 “Sounds like a personal problem to me.” now he has used that line on me  
countless times and I have told him I don’t like it and yet he continues to say it in  
a very derogatory tone of voice.”

17 3:33 “How come you’re so handicapped when I’m here?”  
18

19 3.15 Officer Wyman found Appellant’s tone of voice toward him intimidating, insulting and  
20 offensive, and he found working with Appellant to be very stressful.  
21

22 3.16 Appellant testified that he and Officer Wyman worked well together and that they had a  
23 professional working relationship. Appellant denies that he yelled at or made any insulting or  
24 derogatory remarks to Officer Wyman. Again, we find that Officer Wyman is more credible, and  
25 that there is no motive for him to make these claims against Appellant. Furthermore, Appellant’s  
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1 prior behavior toward Officer Wyman establishes that more likely than not, Appellant yelled at  
2 Officer Wyman and subjected him to unprofessional comments and intimidating behavior and that  
3 he spoke to Officer Wyman in a mocking, sarcastic and demeaning tone.

4  
5 3.17 Superintendent Alice Payne was Appellant's appointing authority. Prior to determining  
6 whether Appellant engaged in misconduct, she reviewed the investigative report dated October 10,  
7 2000. In addition, she met with Mr. Rennie at Appellant's request. On January 18, 2001, Ms.  
8 Payne met with Appellant for an administrative review, and she considered additional information  
9 that Appellant provided to her, including his assertion that Officer Wyman was a schizophrenic.  
10 Ms. Payne did not find Appellant credible and she ultimately concluded that Appellant engaged in  
11 misconduct and that disciplinary action was warranted.  
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13  
14 3.18 Ms. Payne concluded that Appellant violated the department's code of ethics and the policy  
15 on sexual harassment and that his comments about Officer Wyman's children also violated the  
16 policy and was disrespectful and rude. Ms. Payne concluded that Appellant neglected his duty and  
17 abused his position of authority by humiliating and disrespecting his coworker. Ms. Payne found  
18 that Appellant made the major control booth an unpleasant environment for Officer Wyman, and  
19 she concluded that Appellant should have known better but acted in an abusive manner, which no  
20 longer made him trustworthy in a position of authority.  
21

22  
23 3.19 In determining the sanction, Ms. Payne reviewed Appellant's history with the department,  
24 his knowledge of departmental policies, the prior letter of expectation directing him to refrain from  
25 making inappropriate remarks, and considered his position of trust and authority. Ms. Payne felt  
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1 that a severe penalty was warranted and after considering Appellant's long service with the  
2 department, she felt demotion was the appropriate sanction.

3 3.20 The Department of Corrections adheres to a policy which allows employees to work in an  
4 environment free from unsolicited, unwelcome, and inappropriate sexual overtones. The  
5 department has adopted and published policies which require employees to maintain high ethical  
6 and professional standards at all times and which prohibit sexual harassment. DOC Policy 853.025  
7 defines sexual harassment as behavior of a sexual nature which is unwelcome and personally  
8 offensive to the recipient of the action.  
9

10  
11 3.21 The policy further defines a hostile working environment as a working situation in which  
12 the employee has not suffered any tangible economic loss as a result of the alleged harassment but  
13 rather the employee has been subjected to a working environment that is sexually offensive or  
14 intimidating to the employee. The DOC Employee Handbook requires that fellow employees be  
15 treated with dignity and respect. The department's Code of Ethics requires employees to exhibit  
16 high moral and ethical standards and prohibits the use of profanity or inflammatory remarks with  
17 coworkers. Appellant was aware of the department's policies and regulations.  
18

#### 19 **IV. ARGUMENTS OF THE PARTIES**

20  
21 4.1 Respondent argues that this is a case of sexual harassment and a hostile work environment  
22 of one male coworker to another male coworker. Respondent asserts that Appellant's supervisory  
23 role over Officer Wyman made the situation more egregious and that he should be held to a higher  
24 level of responsibility. Respondent argues that Appellant never denied the allegations, but instead  
25 redirected the focus of the allegations to procedural rather than substantive issues. Respondent  
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1 argues that Appellant lacks credibility and that he neglected his duty when he used his supervisory  
2 position and his authority to make disparaging, profane and rude remarks. Respondent argues that  
3 Appellant's abuse of a coworker was a neglect of his duty and constituted gross misconduct.  
4 Respondent argues that Appellant was familiar with the department's rules and regulations and  
5 received ample training. Respondent argues that despite the letter of expectations, Appellant still  
6 engaged in the inappropriate behavior and that demotion was the appropriate sanction.

7  
8 4.2 Appellant denies that he made the statements alleged or engaged in inappropriate  
9 discrimination or harassment. Appellant further asserts that the statements brought by Officer  
10 Wyman are untimely under DOC policy and the applicable union contract. Appellant argues that  
11 the remaining allegations are not supported by sufficient detail to provide him a reasonable  
12 opportunity to provide a defense. Appellant disputes that he said anything inappropriate, although  
13 he does not have any recollection of the incidents alleged to have occurred on or before  
14 September 22, 2000. Appellant further argues that the Respondent failed to prove that he is  
15 incompetent or unfit to perform as a Correctional Sergeant. Appellant argues that the disciplinary  
16 action should be reversed and that he be reinstated to his former position as a Correctional Sergeant.  
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## 19 **V. CONCLUSIONS OF LAW**

20  
21 5.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
22 herein.

23 5.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
24 the charges upon which the action was initiated by proving by a preponderance of the credible  
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
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1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
2 Corrections, PAB No. D82-084 (1983).

3 5.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
4 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
5 of Social & Health Services, PAB No. D86-119 (1987).

7 5.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
8 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

10 5.5 Willful violation of published employing agency or institution or Personnel Resources  
11 Board rules or regulations is established by facts showing the existence and publication of the rules  
12 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
13 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

15 5.6 Respondent has met its burden of proving by a preponderance of the credible evidence that  
16 Appellant violated DOC Policy 853.025 and the Code of Ethics when he made a sexually offensive  
17 and inappropriate comment and asked Officer Wyman whether his children were "Greek," an  
18 innuendo that his children liked to engage in anal sex. Appellant's misconduct was reprehensible  
19 and was clearly prohibited in the work workplace. His misbehavior created an intimidating and  
20 hostile environment and constituted gross misconduct. Furthermore, Appellant's comment to  
21 Officer Wyman had a negative impact on him and affected his working conditions in the major  
22 control booth.  
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1 5.7 Respondent has also proven by a preponderance of the credible evidence that Appellant  
2 neglected his duty and violated the DOC Code of Ethics when he made comments to Officer  
3 Wyman that were unprofessional, harassing and inappropriate in the work place. Appellant also  
4 neglected his duty to treat Officer Wyman with dignity and respect.

5  
6 5.8 In determining whether a sanction imposed is appropriate, consideration must be given to  
7 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
8 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
9 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
10 program. An action does not necessarily fail if one cause is not sustained unless the entire action  
11 depends on the unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).  
12

13 5.9 Appellant was put on notice in December 1999 to discontinue engaging in inappropriate and  
14 unprofessional behavior toward Officer Wyman. Despite the December 26, 1999 letter of  
15 expectations, Appellant continued to engage in a pattern of inappropriate and offensive behavior  
16 toward Officer Wyman, which included making a very sexually offensive, suggestive and  
17 inappropriate comment about Officer Wyman's children. Appellant's failure to modify his behavior  
18 warrants a severe disciplinary sanction. Therefore, the sanction of demotion is appropriate, and the  
19 appeal should be denied.  
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## 21 VI. ORDER

22 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Robert Hall is denied.

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24 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.  
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26 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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René Ewing, Member